

SECOND REGULAR SESSION

# HOUSE BILL NO. 1699

## 101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE ROBERTS.

3371H.01I

DANA RADEMAN MILLER, Chief Clerk

### AN ACT

To repeal sections 455.040, 455.075, and 455.085, RSMo, and to enact in lieu thereof eight new sections relating to domestic violence, with penalty provisions.

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 455.040, 455.075, and 455.085, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 455.040, 455.075, 455.085, 546.262, 546.263, 595.300, 595.310, and 595.320, to read as follows:

455.040. 1. (1) Not later than fifteen days after the filing of a petition that meets the requirements of section 455.020, a hearing shall be held unless the court deems, for good cause shown, that a continuance should be granted. At the hearing, if the petitioner has proved the allegation of domestic violence, stalking, or sexual assault by a preponderance of the evidence, and the respondent cannot show that his or her actions alleged to constitute abuse were otherwise justified under the law, the court shall issue a full order of protection for a period of time the court deems appropriate, and unless after an evidentiary hearing the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the protective order shall be valid for at least one hundred eighty days and not more than one year. If, after an evidentiary hearing, the court makes specific written findings that the respondent poses a serious danger to the physical or mental health of the petitioner or of a minor household member of the petitioner, the protective order shall be valid for at least two years and not more than ten years.

(2) Upon motion by the petitioner, and after a hearing by the court, the full order of protection may be renewed annually and for a period of time the court deems appropriate, and

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 unless the court at an evidentiary hearing made specific written findings that the respondent  
18 poses a serious danger to the physical or mental health of the petitioner or of a minor  
19 household member of the petitioner, the renewed protective order may be renewed  
20 periodically and shall be valid for at least one hundred eighty days and not more than one year  
21 from the expiration date of the previously issued full order of protection. If the court has  
22 made specific written findings that the respondent poses a serious danger to the physical or  
23 mental health of the petitioner or of a minor household member of the petitioner, the renewed  
24 protective order may be renewed periodically and shall be valid for at least two years and up  
25 to the life of the respondent.

26 (3) The court may, upon finding that it is in the best interest of the parties, include a  
27 provision that any full order of protection shall be automatically renewed for any term of  
28 renewal of a full order of protection as set forth in this section unless the respondent requests  
29 a hearing by thirty days prior to the expiration of the order. If for good cause a hearing cannot  
30 be held on the motion to renew or the objection to an automatic renewal of the full order of  
31 protection prior to the expiration date of the originally issued full order of protection, an ex  
32 parte order of protection may be issued until a hearing is held on the motion. When an  
33 automatic renewal is not authorized, upon motion by the petitioner, and after a hearing by the  
34 court, the second full order of protection may be renewed for an additional period of time the  
35 court deems appropriate, except that the protective order shall be valid for any term of  
36 renewal of a full order as set forth in this section. For purposes of this subsection, a finding  
37 by the court of a subsequent act of domestic violence, stalking, or sexual assault is not  
38 required for a renewal order of protection.

39 (4) In determining under this section whether a respondent poses a serious danger to  
40 the physical or mental health of a petitioner or of a minor household member of the petitioner,  
41 the court shall consider all relevant evidence including, but not limited to:

42 (a) The weight of the evidence;

43 (b) The respondent's history of inflicting or causing physical harm, bodily injury, or  
44 assault;

45 (c) The respondent's history of stalking or causing fear of physical harm, bodily  
46 injury, or assault on the petitioner or a minor household member of the petitioner;

47 (d) The respondent's criminal record;

48 (e) Whether any prior full orders of adult or child protection have been issued against  
49 the respondent;

50 (f) Whether the respondent has been found guilty of any dangerous felony under  
51 Missouri law; and

52 (g) Whether the respondent violated any term or terms of probation or parole or  
53 violated any term of a prior full or temporary order of protection and which violated terms  
54 were intended to protect the petitioner or a minor household member of the petitioner.

55 (5) If a court finds that a respondent poses a serious risk to the physical or mental  
56 health of the petitioner or of a minor household member of the petitioner, the court shall not  
57 modify such order until a period of at least two years from the date the original full order was  
58 issued and only after the court makes specific written findings after a hearing held that the  
59 respondent has shown proof of treatment and rehabilitation and that the respondent no longer  
60 poses a serious danger to the petitioner or to a minor household member of the petitioner.

61 2. The court shall cause a copy of the petition and notice of the date set for the  
62 hearing on such petition and any ex parte order of protection to be served upon the respondent  
63 as provided by law or by any sheriff or police officer at least three days prior to such hearing.

64 **Service of the petition and notice of the date set for the hearing on such petition and any**  
65 **ex parte order of protection shall constitute legal notice of any orders issued by the court**  
66 **on the date of the hearing and any subsequent orders issued by the court in the matter.**

67 The court shall cause a copy of any full order of protection to be served upon or mailed by  
68 certified mail to the respondent at the respondent's last known address. Notice of an ex parte  
69 or full order of protection shall be served at the earliest time, and service of such notice shall  
70 take priority over service in other actions, except those of a similar emergency nature. Failure  
71 to serve or mail a copy of the full order of protection to the respondent shall not affect the  
72 validity or enforceability of a full order of protection.

73 3. A copy of any order of protection granted pursuant to sections 455.010 to 455.085  
74 shall be issued to the petitioner and to the local law enforcement agency in the jurisdiction  
75 where the petitioner resides. The court shall provide all necessary information, including the  
76 respondent's relationship to the petitioner, for entry of the order of protection into the  
77 Missouri Uniform Law Enforcement System (MULES) and the National Crime Information  
78 Center (NCIC). Upon receiving the order under this subsection, the sheriff shall make the  
79 entry into MULES within twenty-four hours. MULES shall forward the order information to  
80 NCIC, which will in turn make the order viewable within the National Instant Criminal  
81 Background Check System (NICS). The sheriff shall enter information contained in the  
82 order, including, but not limited to, any orders regarding child custody or visitation and all  
83 specifics as to times and dates of custody or visitation that are provided in the order. A notice  
84 of expiration or of termination of any order of protection or any change in child custody or  
85 visitation within that order shall be issued to the local law enforcement agency for entry into  
86 MULES or any other comparable law enforcement system. The information contained in an  
87 order of protection may be entered into MULES or any other comparable law enforcement

88 system using a direct automated data transfer from the court automated system to the law  
89 enforcement system.

90 4. The court shall cause a copy of any objection filed by the respondent and notice of  
91 the date set for the hearing on such objection to an automatic renewal of a full order of  
92 protection for a period of one year to be personally served upon the petitioner by personal  
93 process server as provided by law or by a sheriff or police officer at least three days prior to  
94 such hearing. Such service of process shall be served at the earliest time and shall take  
95 priority over service in other actions except those of a similar emergency nature.

455.075. The court may order a party to pay a reasonable amount to the other party  
2 for attorney's fees incurred prior to the commencement of the proceeding ~~[or]~~, **throughout**  
3 **the proceeding, and** after entry of judgment. The court shall consider all relevant factors,  
4 including the financial resources of both parties, and may order that the amount be paid  
5 directly to the attorney, who may enforce the order in his name.

455.085. 1. When a law enforcement officer has probable cause to believe a party has  
2 committed a violation of law amounting to domestic violence, as defined in section 455.010,  
3 against a family or household member, the officer may arrest the offending party whether or  
4 not the violation occurred in the presence of the arresting officer. When the officer declines  
5 to make arrest pursuant to this subsection, the officer shall make a written report of the  
6 incident completely describing the offending party, giving the victim's name, time, address,  
7 reason why no arrest was made and any other pertinent information. Any law enforcement  
8 officer subsequently called to the same address within a twelve-hour period, who shall find  
9 probable cause to believe the same offender has again committed a violation as stated in this  
10 subsection against the same or any other family or household member, shall arrest the  
11 offending party for this subsequent offense. The primary report of nonarrest in the preceding  
12 twelve-hour period may be considered as evidence of the defendant's intent in the violation  
13 for which arrest occurred. The refusal of the victim to sign an official complaint against the  
14 violator shall not prevent an arrest under this subsection.

15 2. When a law enforcement officer has probable cause to believe that a party, against  
16 whom a protective order has been entered and who has notice of such order entered, has  
17 committed an act of abuse in violation of such order, the officer shall arrest the offending  
18 party-respondent whether or not the violation occurred in the presence of the arresting officer.  
19 Refusal of the victim to sign an official complaint against the violator shall not prevent an  
20 arrest under this subsection.

21 3. When an officer makes an arrest, the officer is not required to arrest two parties  
22 involved in an assault when both parties claim to have been assaulted. The arresting officer  
23 shall attempt to identify and shall arrest the party the officer believes is the primary physical  
24 aggressor. The term "primary physical aggressor" is defined as the most significant, rather

25 than the first, aggressor. The law enforcement officer shall consider any or all of the  
26 following in determining the primary physical aggressor:

27 (1) The intent of the law to protect victims from continuing domestic violence;

28 (2) The comparative extent of injuries inflicted or serious threats creating fear of  
29 physical injury;

30 (3) The history of domestic violence between the persons involved.

31

32 No law enforcement officer investigating an incident of domestic violence shall threaten the  
33 arrest of all parties for the purpose of discouraging requests or law enforcement intervention  
34 by any party. Where complaints are received from two or more opposing parties, the officer  
35 shall evaluate each complaint separately to determine whether the officer should seek a  
36 warrant for an arrest.

37 4. In an arrest in which a law enforcement officer acted in good faith reliance on this  
38 section, the arresting and assisting law enforcement officers and their employing entities and  
39 superiors shall be immune from liability in any civil action alleging false arrest, false  
40 imprisonment or malicious prosecution.

41 5. When a person against whom an order of protection has been entered fails to  
42 surrender custody of minor children to the person to whom custody was awarded in an order  
43 of protection, the law enforcement officer shall arrest the respondent, and shall turn the minor  
44 children over to the care and custody of the party to whom such care and custody was  
45 awarded.

46 6. The same procedures, including those designed to protect constitutional rights,  
47 shall be applied to the respondent as those applied to any individual detained in police  
48 custody.

49 7. A violation of the terms and conditions, with regard to domestic violence, stalking,  
50 sexual assault, child custody, communication initiated by the respondent or entrance upon the  
51 premises of the petitioner's dwelling unit or place of employment or school, or being within a  
52 certain distance of the petitioner or a child of the petitioner, of an ex parte order of protection  
53 of which the respondent has notice, shall be a class A misdemeanor unless the respondent has  
54 previously pleaded guilty to or has been found guilty in any division of the circuit court of  
55 violating an ex parte order of protection or a full order of protection within five years of the  
56 date of the subsequent violation, in which case the subsequent violation shall be a class E  
57 felony. Evidence of prior pleas of guilty or findings of guilt shall be heard by the court out of  
58 the presence of the jury prior to submission of the case to the jury. If the court finds the  
59 existence of such prior pleas of guilty or finding of guilt beyond a reasonable doubt, the court  
60 shall decide the extent or duration of sentence or other disposition and shall not instruct the

61 jury as to the range of punishment or allow the jury to assess and declare the punishment as a  
62 part of its verdict.

63 8. A violation of the terms and conditions, with regard to domestic violence, stalking,  
64 sexual assault, child custody, communication initiated by the respondent or entrance upon the  
65 premises of the petitioner's dwelling unit or place of employment or school, or being within a  
66 certain distance of the petitioner or a child of the petitioner, of a full order of protection shall  
67 be a class A misdemeanor, unless the respondent has previously pleaded guilty to or has been  
68 found guilty in any division of the circuit court of violating an ex parte order of protection or  
69 a full order of protection within five years of the date of the subsequent violation, in which  
70 case the subsequent violation shall be a class E felony. Evidence of prior pleas of guilty or  
71 findings of guilt shall be heard by the court out of the presence of the jury prior to submission  
72 of the case to the jury. If the court finds the existence of such prior plea of guilty or finding of  
73 guilt beyond a reasonable doubt, the court shall decide the extent or duration of the sentence  
74 or other disposition and shall not instruct the jury as to the range of punishment or allow the  
75 jury to assess and declare the punishment as a part of its verdict. For the purposes of this  
76 subsection, in addition to the notice provided by actual service of the order, a party is deemed  
77 to have notice of an order of protection if the law enforcement officer responding to a call of a  
78 reported incident of domestic violence, stalking, sexual assault, or violation of an order of  
79 protection presented a copy of the order of protection to the respondent.

80 9. **In cases in which the respondent has been properly served with an ex parte**  
81 **order of protection but fails to appear in court on the date and time set forth in the ex**  
82 **parte order for the full order of protection hearing, the respondent shall be considered**  
83 **to have knowledge of any conditions set forth in the subsequent full order of protection**  
84 **issued by the judge at that hearing. If the respondent fails to appear in court on the day**  
85 **of the hearing, the respondent shall be considered to have knowledge of all of the**  
86 **conditions set forth in the full order of protection judgment. The respondent shall be**  
87 **subject to civil or criminal enforcement of the conditions contained in the default full**  
88 **order of protection judgment.**

89 10. Good faith attempts to effect a reconciliation of a marriage shall not be deemed  
90 tampering with a witness or victim tampering under section 575.270.

91 ~~[40-]~~ 11. Nothing in this section shall be interpreted as creating a private cause of  
92 action for damages to enforce the provisions set forth herein.

546.262. **A court shall not compel a victim or member of the victim's family**  
2 **testifying in a criminal proceeding for a violation of sections 565.072 to 565.076 to**  
3 **disclose a residential address or place of employment on the record in open court unless**  
4 **the court finds that disclosure of the address or place of employment is necessary.**

546.263. 1. A person may testify by video conference at a criminal trial involving  
2 an offense under sections 565.072 to 565.076 if the person testifying is the victim of the  
3 offense. The circuit and associate circuit court judges for each circuit shall develop local  
4 rules and instructions for appearances by video conference permitted under this  
5 subsection, which shall be posted on the circuit court's internet website.

6 2. The circuit and associate circuit court judges for each circuit shall provide,  
7 and post on the circuit court's internet website, a telephone number for the public to call  
8 for assistance regarding appearances by video conference.

595.300. In any case involving an offense under sections 565.072 to 565.076, no  
2 plea bargain shall be offered to the defendant.

595.310. If a defendant is convicted of any offense under sections 565.072 to  
2 565.076, in addition to any other restitution ordered to be paid by the defendant, the  
3 defendant shall be required to pay one thousand dollars to any domestic violence shelter  
4 located in the city or county in which the victim resides.

595.320. If a judge orders a person who has been convicted of an offense under  
2 sections 565.072 to 565.076 to attend any domestic violence-related class, the person  
3 shall be financially responsible for any costs associated with attending such class.

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